

THE ABOUSHI LAW FIRM, PLLC

**1441 Broadway Fifth Floor
New York, NY 10018
Phone: (212) 391-8500
Fax: (212) 391-8508
www.Aboushi.com**

March 29, 2023

BY: ECF

Hon. Jennifer E. Willis
United States Magistrate Judge
40 Foley Square, Room 228
United States Courthouse
New York, NY 10007

**Re: El Nabi v. City of New York
21-cv-03768 (LAK) (JW)**

Dear Hon. Judge Willis,

We represent Plaintiff Hassab El Nabi in the above referenced matter. We write to request clarification of the court's statements made during the conference held on February 09, 2023. Attached to this letter motion is a copy of the transcript for said conference. We understood the February 09, 2023 conference to be a mediation/settlement conference. In our joint letter filed on 1/19/2023, we referenced material information that supported our position that we preferred to disclose during the mediation as opposed to a public docket that included conversations between the plaintiff and his prior counsel. *See Dkt 49 pg. 3.*

The Court directed prior counsel to submit documents in camera, to which current counsel was not permitted to view — let alone contextualize, challenge, or otherwise clarify. While we understood what the Court said during the conference to be the sort of things Courts routinely say during settlement conference, prior counsel has revealed he believes the Court has already made

factual findings and legal rulings regarding material issues that are still subject to motion practice, hence the briefing schedule before the court. *See Dkt No. 53.* That is, his position is that the Court has issued binding rulings without any adverse briefing or factual record — or any statement from Plaintiff himself about interactions with his former lawyer

It is our understanding, that conference was a settlement session and not a hearing. No one went under oath, there was no evidence authenticated or placed in the record, and there was no opportunity for cross-examination. Further, no orders were issued by the Court thereafter, and the docket entry for the hearing does not state any orders were made. The material submitted for the court's consideration prior to the conference were a joint letter by current and previous counsel explaining our positions and ex-part submission by previous counsel of "any documents explaining the series of events that led to prior counsel's replacement by email to the court" See Dkt. 50.

Indeed, not only was Plaintiff's current counsel not privy to said documents, but the Court did not provide Plaintiff himself an opportunity to submit any documents in support of his position regarding constructive discharge or respond to what was submitted to the court ex-parte by previous counsel. We had understood, as a matter of simple procedure, that the court could not have made any ruling or orders based in part, upon ex-parte submissions and without the parties briefing the issue. We also understood the court's statements to not be binding as the court ordered a briefing schedule in the event counsel could not resolve the issue amongst ourselves.

Given prior counsel's position, however, and the impending briefing schedule, we respectfully request a clarification of Your Honor's statements. And, to the extent the Court intended to issue an order, we ask that the Court enter it formally, such that we can address, among other things, our due process concerns by appeal or reconsideration motion.

We thank Your Honor for you time and attention to this matter.

Respectfully Submitted,

/s/
Tahanie A. Aboushi, Esq.

/s/
J. Remy Green
Elena L. Cohen
Cohen & Green P.L.L.C.
Attorneys for Plaintiff
1639 Centre St., Suite 216
Ridgewood, New York 11385